

EXHIBIT A

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 14-12611(SCC)

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5 In the Matter of:

6
7 NII HOLDINGS, INC. and NII

8 INTERNATIONAL HOLDINGS S.A.R.L.,

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10 Debtors.

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13
14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 March 31, 2015

19 2:09 PM

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21 B E F O R E :

22 HON SHELLY C. CHAPMAN

23 U.S. BANKRUPTCY JUDGE
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1 Hearing re: Doc #522 Motion of the Ad Hoc Group of NII
2 Capital 2021 Noteholders for an Order Directing the Debtors
3 to Participate in Mediation

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P R O C E E D I N G S

THE COURT: Okay. Mr. Seider, how are you?

MR. SEIDER: Well, thank you, Your Honor. And
you?

THE COURT: Good.

MR. SEIDER: Good. Good afternoon, and for the
record, Mitchell Seider of Latham & Watkins on behalf of the
ad hoc committee of holders of 2021 Capco (ph) notes.

Your Honor, whether to grant today's motion is
soundly committed to the Court's discretion. I will explain
why the Court should exercise that discretion --

THE COURT: Okay.

MR. SEIDER: -- and grant the motion.

The Capco 21 note group believes, Your Honor, that
negotiation is a matter of first principal and is preferable
to litigation at a contested confirmation hearing, and the
group also believes that it's likely that the group's issues
can be resolved through good faith negotiations among the
parties.

The issues, Your Honor, are straightforward, but
the Court's intersession here is necessary, and the
assistance of a mediator is likely to be needed if there is
to be a successful negotiation.

THE COURT: Why is that though?

MR. SEIDER: Your Honor, several reasons.

1 First, I think as we made plain in the papers that
2 we filed with the Court, we have tried to open the door and
3 invite ourselves into the room to discuss the merits of the
4 proposed plan and we have been rebuffed.

5 Additionally, Your Honor, if you consider the PSA
6 that's been filed with the Court, and specifically Sections
7 3.01 and 4.02 this are cited in footnotes to the debtors'
8 objection -- I don't recall the page number in the objection
9 -- but as quoted in the objection, Your Honor, the
10 consenting noteholder group, that would be Aurelius, Capree
11 (ph), and Luxco claim holders, are bound to not negotiate
12 with respect to any potential settlement resolution or other
13 culmination for these cases other than what is defined as to
14 that plan.

15 THE COURT: So you said it was 3.01 and what use
16 was the other?

17 MR. SEIDER: 4.02, Your Honor. Let me just
18 confirm that those are the right references. 4.02(e), which
19 goes to the debtors and the committee, and then 3.01(d),
20 which goes to the consenting noteholder group.

21 The debtors and the committee, Your Honor,
22 obviously and appropriately have fiduciary outs, but it's
23 our view that because the consenting noteholders are bound
24 to only this plan they would need instruction from the Court
25 in order to engage in negotiation towards a resolution other

1 than what is specifically provided for in the pending plan.

2 Your Honor of course I think is familiar with the
3 debtors' capital and debt structure. There are five issues
4 of high yield notes, two of these are the Luxco notes, three
5 of these are the Capco notes. The Luxco notes are
6 structurally senior, the Capco notes structurally junior.

7 On their face each of the three series of Capco
8 notes, Your Honor, are pari passu with one another. They
9 are of equal dignity, and there is nothing in one issue that
10 purports to make it junior to any of the -- either of the
11 other two issues.

12 Under the debtors' proposed plan, Your Honor, one
13 series of the Capco notes will receive approximately
14 \$150 million in value less than it would receive if each of
15 the three series of the Capco notes received a ratable
16 distribution.

17 At the same time, Your Honor, the holders of the
18 other two series of Capco notes will receive an additional
19 combined distribution of approximately \$285 million.

20 The disadvantage notes are the capital 21 notes,
21 the favored notes are the Capco 16 notes and the Capco 19
22 notes.

23 Now the harm, Your Honor, to the Capco 21 group
24 from this distribution scheme is material. The ad hoc group
25 of 21 notes --

1 THE COURT: You know, let me if I could stop you,
2 because I don't want to have a mini confirmation hearing.

3 MR. SEIDER: Yes, Your Honor.

4 THE COURT: And we're moving in that direction.
5 So, I don't want to cut you off, I don't want to cut off
6 your arguments, but I'm not going to have a preliminary
7 confirmation hearing, including giving any preliminary view
8 about the merits of what you're saying.

9 MR. SEIDER: I certainly --

10 THE COURT: It'd be inappropriate and I'd not
11 smart enough on all the facts to do that.

12 So, I very much want to stay focused on the issue
13 of mediation, what makes this case different from other
14 cases in which there's less than 100 percent consensus.

15 MR. SEIDER: Yes.

16 THE COURT: So --

17 MR. SEIDER: Your Honor, and what I was about to
18 say about the plan was really prefatory so that Your Honor
19 understood --

20 THE COURT: Okay, fair enough.

21 MR. SEIDER: -- the alternatives to -- what the
22 litigation alternatives to mediation are.

23 THE COURT: Okay.

24 MR. SEIDER: And to go to Your Honor's question as
25 to what makes -- well seasonal climb -- what makes this case

1 different from all other cases, Your Honor.

2 THE COURT: A very good seasonal climb.

3 MR. SEIDER: Yeah, thank you.

4 THE COURT: I could also make a pun, I now have an
5 opening for a contested wireless Chapter 11.

6 (Laughter)

7 THE COURT: That wouldn't be so funny.

8 MR. SEIDER: Yeah, I understand, Your Honor, and
9 we are doing our best to avoid that.

10 Your Honor, I think the answer lies in a couple of
11 points as to Your Honor's question as to what makes this one
12 different, and I think the answers again are several fold.

13 First, the purported basis for the disparate
14 treatment of issues that are -- excuse me -- of note issues
15 that are of equal dignity is the settlement of claims, which
16 prior to this bankruptcy case appeared, based on the
17 debtors' public statements to the Securities and Exchange
18 Commission, and frankly reviewed by many parties outside of
19 the context of this case, to be without merit. And we now
20 find ourselves in a position where the debtors' statement to
21 the securities and exchange commission says the claims are
22 without merit but they're being settled to approximately
23 \$285 million in value. That to us, Your Honor, is a very
24 wide delta and we think there must with room between the two
25 positions with respect to that point.

1 Additionally, Your Honor, as I mentioned at the
2 outset we have been trying, the Capco 21 group has been
3 trying for a considerable amount of time to finds its way
4 into the room to have principal discussions about the merits
5 of the proposed settlement and what can be done to make this
6 plan fully consensual.

7 THE COURT: So on that point there were
8 statements, allegations, that you had been offered entree
9 into the room, but because certain of the holders -- perhaps
10 not all of them -- but certain of the holders had chosen to
11 not become restricted so that precluded their meaningful
12 participation.

13 MR. SEIDER: Yes.

14 THE COURT: Is that accurate?

15 MR. SEIDER: Actually, Your Honor, it's not, and
16 I'll explain why.

17 THE COURT: Okay.

18 MR. SEIDER: Prior to the PSA that was filed with
19 the Court on November 24th, which was subsequently
20 terminated by the debtors --

21 THE COURT: Right.

22 MR. SEIDER: -- professional representatives of
23 the Luxco group asked two members of the current Capco 21
24 group if they would become restricted for purposes of
25 discussions. One said yes, one said no. The RSA that

1 followed that outreach has since been withdrawn, there's
2 been a C change in the case, the sale of the Mexico
3 subsidiary --

4 THE COURT: Right.

5 MR. SEIDER: -- in a very successful manner, and
6 the joining into the discussions of the Luxco group.

7 And I would point out for Your Honor, as Your
8 Honor may recall from filings that occurred here I believe
9 in December, the Luxco group had to come before the Court
10 and essentially say we've been frozen out of discussions,
11 holders of Capco debt have gone off by themselves,
12 compromised issues, and the results of their private
13 compromise have a negative economic impact on us, we should
14 be part of the discussions too.

15 THE COURT: Right. So that led to the appointment
16 of Mr. Win.

17 MR. SEIDER: Correct, Your Honor. That's correct.

18 THE COURT: Okay.

19 MR. SEIDER: Now to flash forward and I think
20 perhaps pick up on the thread that Your Honor started with
21 respect to the outreach prior to the withdrawal of the
22 first --

23 THE COURT: Right.

24 MR. SEIDER: -- RSA. In the first week of
25 February of this year we contacted the debtors' counsel and

1 the committee counsel, and as you may have seen in our reply
2 on February 12th offered to sign NDAs so that our business
3 principals could become involved in discussions. As Your
4 Honor will recall that was with respect to the offer on the
5 NDAs three weeks and with respect to the outreach four weeks
6 before the current RSA was filed.

7 There clearly was a window of time when if there
8 had been a will to bring the Capco 21 group into the process
9 that could have occurred. It didn't.

10 We then filed the mediation motion, which we're
11 here on today. After that mediation motion was filed we,
12 the professional -- well the law firm that represents the
13 Capco 21 group, was invited to meet with the law firms and
14 the financial advisors to the debtor and to the committee.
15 That meeting occurred on March 20th.

16 On March 22nd the ad hoc 21 Capco group made a
17 settlement proposal to the debtor and to the committee and
18 authorized them to share it with the other parties and with
19 their business people at will. We have not had a response
20 to that settlement proposal since, and today is the 31st of
21 March, Your Honor, it's nine days.

22 Now from our perspective, Your Honor, we're really
23 at the fork. We've got a confirmation schedule propounded
24 by the debtors for a confirmation hearing on June 3rd.

25 THE COURT: June 3rd. Right.

1 MR. SEIDER: That's not that far, but it's also
2 not that close.

3 It is apparent to us from the RSA that I mentioned
4 to you and those sections and from the actions of the
5 consenting noteholders, the committee, and the debtors since
6 the 5th of February, that if we are in fact going to have
7 negotiation rather than litigation it's going to have to
8 come through this Court's intersession and requirement that
9 the parties see a neutral mediator who can pick up the
10 issues, which quite frankly, Your Honor, are relatively
11 small. It's all about the transfer guarantee claim and the
12 composition that goes forward, and that claim in term, Your
13 Honor, is derived from a reading of a contract, and that's
14 basically it. It is complicated, there's a lot of money
15 involved, but at bottom that's really what's at issue.

16 THE COURT: Okay. Why don't I hear from the
17 debtor and then we'll go from there.

18 MR. SEIDER: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 MR. GREENBERG: Good afternoon, Your Honor.

21 THE COURT: Good afternoon.

22 MR. GREENBERG: Scott Greenberg, Jones Day, on
23 behalf of the debtors.

24 Your Honor, before I get into our objection just
25 some preliminary remarks, one actually just echoes what you

1 said, which is we don't view this as a confirmation hearing,
2 so --

3 THE COURT: Right.

4 MR. GREENBERG: -- we're going to try to focus on
5 the issue at hand.

6 THE COURT: Okay.

7 MR. GREENBERG: As Your Honor knows we filed our
8 amended plan on March 13th and a PSA motion on the 24th, and
9 both of those are set to be heard on June 3rd. And so for
10 those reasons I'm going to avoid arguing the merits of those
11 two, the PSA and the plan.

12 Finally, Your Honor, and we made chambers aware of
13 this as well as Latham, we do have Homer Parkhill, who is
14 our managing director from Rothschild --

15 THE COURT: Okay.

16 MR. GREENBERG: -- in court with us today, and I
17 do think even if briefly it would be helpful for Your Honor
18 to spend a few minutes and put Homer on -- or Mr. Parkhill
19 on the stand.

20 He spent time at the center of this negotiation
21 from its inception, and could give the Court a little bit of
22 context of how we got to where we are, and quite frankly,
23 having sat in those negotiations whether he thinks a
24 mediation will actually change what's on the table.

25 THE COURT: All right. Does anyone have an

1 objection to the debtor putting Mr. Parkhill on the stand?

2 Mr. Seider?

3 MR. SEIDER: No, Your Honor.

4 THE COURT: Okay. All right.

5 MR. GREENBERG: So, Your Honor, I'm going to start
6 out with what we're not arguing, okay? And what we're not
7 arguing is that mediation in any way is a bad thing or
8 inappropriate or doesn't help in certain cases, because I
9 don't believe that. But what we do believe is that in these
10 circumstances, at this late stage in the game in these
11 cases, that there's not going to be a real benefit achieved
12 from forcing these parties. And as you've seen from the
13 numerous objections you got from all the parties it truly
14 would be forcing these parties into a mediation.

15 You'll hear this from Mr. Parkhill when he
16 testifies on the stand, but the answer is, Your Honor,
17 there's really not anything more to go around at this point.

18 This deal, particularly the last round of
19 negotiations, were intense, and were as we said in a couple
20 of the pleadings, about hundreds of thousands of dollars in
21 a case of this magnitude.

22 People have really moved over the last year as far
23 as quite frankly those of us that have been involved for
24 over a year think they're going to. And so, in our mind
25 forcing us into mediation, and we're not disputing that the

1 Court has that discretion, I don't think there's any
2 argument about that, but forcing us into it isn't going to
3 bear fruit.

4 THE COURT: Although I'd say just anecdotally it's
5 highly unusual --

6 MR. GREENBERG: To force --

7 THE COURT: -- to force parties into mediation
8 over strenuous objections.

9 MR. GREENBERG: Right.

10 THE COURT: That being said, it's an open secret
11 that, I mean I ordered everyone into mediation in
12 LightSquared --

13 MR. GREENBERG: Yep.

14 THE COURT: -- without even giving the parties an
15 opportunity to object, but --

16 MR. GREENBERG: I think that's right, Your Honor,
17 and I was going to get to that.

18 THE COURT: So you don't have to pause a lot on
19 that.

20 MR. GREENBERG: Right. And with all due respect
21 and congratulations on having that case wrapped up.

22 THE COURT: Don't say that word in my presence.

23 MR. GREENBERG: I don't think we're LightSquared
24 by any stretch in terms of the complexities of the case.

25 And you saw we quoted in our case, which we

1 thought was a helpful example the Longview Power case --

2 THE COURT: Right.

3 MR. GREENBERG: -- which is pending In Delaware
4 which is -- and Judge Shannon said, if I'm going to force
5 people in they're not really committed to the process, I
6 don't see the upside in forcing people into mediation. And
7 we think that's what's more appropriate here given the level
8 of response, given the folks in the courtroom that you're
9 going to hear from with their view.

10 THE COURT: So just -- Mr. Seider left --

11 MR. GREENBERG: Right.

12 THE COURT: -- with the statement that there was
13 something that came your way on March 22nd to which as of
14 today you hadn't responded.

15 MR. GREENBERG: Fair enough, and I intend to
16 respond.

17 THE COURT: Okay.

18 MR. GREENBERG: Which is for the record --

19 THE COURT: And without getting into settlement
20 negotiations.

21 MR. GREENBERG: I won't violate 408, but I guess
22 on the eve of I guess it was last Sunday of the DIP hearing
23 and the sale hearing we did hear from Mr. Seider with the
24 framework of a proposal, and I will say it's -- and we've
25 talked to the parties that are parties to the PSA, it's a

1 non-starter, it's -- and that's kind of the fundamental
2 point. You could put us in a mediation and those same
3 proposals are going to be made and we get to the same
4 result. So, unfortunately I don't think that there's
5 anything there to work with from the parties in this room.

6 And, Your Honor, first and foremost after a year
7 plus of negotiations, and you've seen a lot of it post-
8 petition, there was six months of it prepetition, we've
9 finally gotten to a spot where we have north of 70 percent
10 of Luxco and north of 70 percent of Capco that are parties
11 to this PSA and support the plan. We've surpassed the
12 requirements most importantly as Your Honor knows of
13 1126(c), in that we have greater than 66 and two-thirds in
14 amount. Our major creditors support the deal. The
15 creditors' committee is a co-proponent of the plan. As Your
16 Honor knows, because we filed the PSA motion, the
17 independent manager that this Court appointed to come in and
18 take a look at this with his own counsel is supportive of
19 the plan, and actually I believe Quinn Emanuel is here
20 today --

21 THE COURT: Okay.

22 MR. GREENBERG: -- and they'll give you their view
23 and an update of where we are.

24 And, Your Honor, most importantly to us whether,
25 you know, people take their posturing in their positions is

1 I kind of say look at the numbers, look at the math that was
2 the result of the new PSA as it relates to the old PSA. I
3 think it's Exhibit B to the objection. I have other copies
4 if people want it. I wasn't trying to submit it into
5 evidence, but it just (indiscernible) comparison. Sorry.

6 (Pause)

7 MR. GREENBERG: May I approach?

8 THE COURT: Yes, please. I'm not sure I have
9 Exhibit B. Great. Thank you. Oh, great.

10 MR. GREENBERG: So we did a comparison, we filed
11 this with the papers, and it's also in the plan and
12 disclosure statement as amended that we filed, which shows
13 the relative pick ups from the deal we filed back in
14 November to the deal that was filed more recently post the
15 Mexico sale transaction, and let's focus on the 21s since
16 that's the argument in front of Your Honor.

17 Under the old deal, under the prior plan that was
18 filed in I guess November and the PSA December and the plan
19 the Capco 20 runs on a pre-rights offering basic we're
20 entitled to -- I'm just talking in dollars now instead of
21 percentages -- \$268 million -- or \$298 million on post-
22 rights. The plan that was filed on 3/13 you'll see that
23 they're up to a \$437 million recovery.

24 And so depending if you're using pre or post
25 rights they pick up somewhere between 140- and

1 \$170 million under the new deal, and it's roughly 47 to 63
2 percent pick up from the deal that we filed back in
3 November.

4 And what's ironic about who we're fighting now
5 here in court about the new deal is that no one did better
6 than the 21s in terms of comparing this to the prior PSA.
7 No one --

8 THE COURT: On a percentage improvement basis?

9 MR. GREENBERG: On a dollars basis, on a
10 percentage improvement basis, no one did better.

11 So for guys that were apparently frozen out and
12 not in the room I would contend that the 60 percent of 21
13 noteholders that were in the room were acutely aware of what
14 their recovery was and were making sure that it was
15 protected.

16 THE COURT: Okay.

17 MR. GREENBERG: So, Your Honor, just to -- and
18 I'll get through it briefly because I don't want to get into
19 the he said; she said about the process, but there's been a
20 lot of allegations about -- as Mr. Seider pointed out --
21 there are multiple requests to be included in plan
22 negotiations, and the truth of the matter is, and I don't
23 think we're ducking from this one at all, that all happened
24 very recently when this new formed group tried to inject
25 itself into very, very mature and far along negotiations in

1 mid February, and that was nearly a year after the creditor
2 negotiations commenced in this case, five months after the
3 commencement of the cases, about five months after the
4 creditors' committee was formed, three months after we
5 announced our prior PSA, and remember, our prior PSA these
6 guys were \$170 million worse off.

7 So my question is, where have you been since
8 November? And --

9 THE COURT: Well, I guess one question is have
10 they been since November? I mean we don't know -- I'm not
11 really following how the paper is trading, but --

12 MR. GREENBERG: I think Mr. Seider will tell you
13 the first time that they reached out to us was mid February
14 -- or sorry, early February. Mid February was the first
15 letter.

16 And as we disclosed in the pleadings while the PSA
17 was announced on March 5th and filed with the Court, and
18 you'll hear this from Mr. Parkhill, the agreement in
19 principal on the main economic terms, valuation, you know,
20 what are the settlement values, everything else were reached
21 basically in the first 10 or 11 days of February. So done
22 by the time he had reached out to us.

23 And what took threes weeks to get to an
24 announcement quite frankly, Your Honor, just to understand
25 how fragile this deal was at the time, were fights over

1 professional fees, hundreds of thousands of dollars, and
2 that's what held this thing up for three weeks in a case of
3 this size. It was, you know, who's taking a hit on their
4 fees to make this work?

5 So those were the kind of dollars we were talking
6 about in reaching a deal, and so say that this wasn't an
7 easy deal it almost fell apart a couple times over minor
8 dollars is very, very accurate.

9 And I do want to address some points --

10 THE COURT: But just to say it out loud though --

11 MR. GREENBERG: Yeah.

12 THE COURT: -- sometimes folks come in with a deal
13 that's 75 percent, 80 percent almost supported by the entire
14 capital structure percent --

15 MR. GREENBERG: Right.

16 THE COURT: -- and it doesn't get confirmed.

17 MR. GREENBERG: That's right.

18 THE COURT: I mean it's either going to get
19 confirmed or it's not going to get confirmed.

20 MR. GREENBERG: All confirmation issues.

21 THE COURT: Right?

22 MR. GREENBERG: That's right.

23 THE COURT: So, I mean I guess for Mr. Seider's
24 benefit just say it out loud. You come in and there's a
25 plan and everyone makes their arguments about whether it's

1 confirmable, and the amount of consensus that it has
2 garnered is --

3 MR. GREENBERG: It still has to meet the
4 requirements in the code.

5 THE COURT: -- it is what it is and it still has
6 the meet the requirements of the code, with respect to any
7 and all of the issues.

8 MR. GREENBERG: I don't think anyone is
9 disagreeing with that --

10 THE COURT: All right.

11 MR. GREENBERG: -- and that's why I said at the
12 outset I think these are confirmation objections, and we'll
13 deal with them when the time comes, and we're confident that
14 we have a plan that we can confirm.

15 Your Honor, I do want to just touch upon the
16 process, because I do feel like the debtors' get some mud
17 thrown at them from time to time, so just to give you a bit
18 of history.

19 In my in my opinion, and obviously I have a bias,
20 I feel like these debtors have maintained transparency
21 throughout this process with respect to the negotiation
22 process, with respect to speaking to parties in interest and
23 everything else, and the idea that, you know, again quoting
24 from their letter in the -- that was attached to the motion,
25 the debtors' plan process has deliberately excluded the 21s

1 from the negotiating table and we've refused to include the
2 21 noteholders in plan negotiations. They even offer up an
3 NDA. I think is a bit misleading.

4 For over a year we've been at this, it started in
5 March of last year when we started to engage with our
6 creditors and told them to get organized. We spell it out
7 in more detail in Mr. Parkhill's affidavit and other about
8 the various amount of meetings and negotiations we've had.

9 I'm sad to say this has been a seven day a week
10 job for over a year in getting very tough parties to get to
11 a deal. The creditors' committee came in in October and
12 they took a look and did their own independent investigation
13 with FTI as you know looking at these claims so they could
14 help move this forward and get our creditors to a deal.

15 Back in November as we talked about went through,
16 and I think Kirkland filed a pleading as it relates to this
17 issue, we also worked with Kirkland and Milstein quite
18 frankly to try to round up 21 noteholders at that time.

19 So there had been an outreach, and in fairness to
20 Mr. Seider it wasn't when he was representing them --

21 THE COURT: Right.

22 MR. GREENBERG: -- but he came to this party a
23 little bit late. But there was an effort.

24 THE COURT: Didn't Mr. Neiger (ph) surface at one
25 point on behalf of one of these holders?

1 MR. GREENBERG: One point. Who is now a party --
2 part of --

3 THE COURT: Right.

4 MR. GREENBERG: -- Mr. Seider's group.

5 THE COURT: Okay.

6 MR. GREENBERG: Some of the 21 noteholders
7 actually signed NDAs, or at least one of them that's now a
8 party to Mr. Seider's group, others affirmatively declined
9 to sign NDAs at the time. J Pam (ph), quite frankly who's I
10 think roughly 39 percent of the holdings of Mr. Seider's
11 group, was part of the Paul, Weiss cross holder group during
12 the course of the summer, which is the main body we were
13 negotiating this deal with all summer. So not all these
14 faces are new faces to the party.

15 And I don't want to suggest something here, which
16 I'm not, which is people are free to remain restricted, I
17 mean we deal -- unrestricted, I'm sorry -- we deal with that
18 issue all the time and I totally understand that, that's a
19 choice people have to make at their funds, but it's not as
20 if --

21 THE COURT: You can't have it both ways.

22 MR. GREENBERG: Right. It's not as if we were
23 hiding in the darkness and no one could reach out to us, we
24 were there.

25 Unfortunately most of our negotiations were in the

1 press constantly. There was no mystery around what was
2 going on and that we were trying to negotiate with our
3 creditors to get to a confirmable plan, which was always our
4 goal was to get to a confirmable plan that we could bring
5 before this Court.

6 THE COURT: The actual bid and asks were in the
7 press or the fact of the -- that the negotiations were going
8 on?

9 MR. GREENBERG: There were a couple that actually
10 made its way to the press, which was a little disappointing
11 at times, but I prefer not to relive it. But yes, I mean we
12 actually had bid and ask go out to the press.

13 So, I think it's a little unfair, especially when
14 you have a bunch of people that had opportunity to
15 participate in the past, to show up on February 12th, and
16 most importantly with no proposal, it was a call and a
17 request for a seat at the table but not hey and here's my
18 proposal, you should chew on it, just I want to get in the
19 room that unfortunately already had way too many cooks in
20 the kitchen and we were trying to hold together a fragile
21 deal.

22 THE COURT: You got -- you're over metaphored.
23 We've got horses being led to water, we've got wheels on
24 carts.

25 MR. GREENBERG: I'll try to tune back my

1 metaphors. Just having some fun with them.

2 THE COURT: Just showing you that I read the
3 papers.

4 MR. GREENBERG: Thank you.

5 But quite frankly, Your Honor, I think my
6 conclusion is because someone made a request at the eleventh
7 hour to sit down at the table and, you know, the debtors and
8 everyone else, the parties that had the requisite vote in
9 the room decided that it wasn't going to help, and
10 apparently -- and oh, you know, possibly impede our ability
11 to get to a deal, doesn't mean the process was flawed.

12 I spoke to Mr. Seider, and again, no he said; she
13 said, but I answered the calls pretty quickly, I thought I
14 was pretty candid about where we were in the process, and
15 quite frankly at the time the holdings have increased but it
16 was a five or six percent holder of Cap and a nine percent
17 holder of the 21s and we didn't see the benefit of adding
18 them in.

19 THE COURT: So, I think though what you're telling
20 me is that you're not going to talk to them between now and
21 June 3rd.

22 MR. GREENBERG: I didn't say --

23 THE COURT: Is that what you're saying?

24 MR. GREENBERG: No, I didn't say that actually,
25 because we have. And as Mr. Seider noted we signed an NDA

1 with Latham, we sat down with them at our offices, we had
2 some conversations, we got an initial proposal, I'm telling
3 you the proposal doesn't work, and it doesn't -- it's not
4 going to have any traction with the other holders, and quite
5 frankly simultaneously -- and this goes to cost savings and
6 everything else around mediation -- we've also already
7 agreed with Latham on a litigation schedule and on a
8 discovery schedule to work backwards from June 3rd. And
9 quite frankly last night was the first exchange of initial
10 discovery requests. So that process has started.

11 THE COURT: And that schedule goes to the whole
12 panoply of potential things that may or may not be raised at
13 confirmation.

14 MR. GREENBERG: Whatever they need. I don't think
15 there's been any disputes so far as to among the litigators,
16 maybe I'll let the litigators talk about it in terms of
17 getting them whatever they need in connection with
18 confirmation.

19 The one other thing I do want to note though,
20 because it troubles me a bit, is there was a lot of
21 allegations about, you know, there's no unconflicted party
22 representing the interests of the 21s, and you know,
23 everyone is hedged all over the capital structure so they
24 just threw the 21s under the bus, right, which I think is
25 the takeaway from their pleadings, and I found it kind of

1 ironic that after the 2019 was filed --

2 THE COURT: Some of them are hedged too.

3 MR. GREENBERG: These guys -- five out of eight I
4 think are hedged. And again, I actually -- I don't have an
5 issue with that, I think that's most of the deals we work on
6 nowadays have that dynamic. But the reality is it's not a
7 basis to disqualify, it's not a basis to designate, and I
8 haven't heard anyone say that there's a motion here, you
9 know, under 1126(e) to designate the PSA parties' votes,
10 right? It happens all the time.

11 So -- and I just found that there was a certain
12 irony to the fact that somehow this group who's also hedged
13 was going to rectify that problem, the problem in our
14 process.

15 So as Your Honor already knows we provided them an
16 NDA, we met in person, as I said, not to repeat it, but we
17 have a litigation schedule, I think -- I don't think there's
18 been any problems, I think there's one potential date which
19 there's a little disagreement over, but everything else has
20 already started, we're going to give them what they need,
21 and you know, there's a proposal on the table that's been
22 rejected, which in my mind almost kind of gets me to why
23 mediation is not going to add anything.

24 I think our efforts are better focused on getting
25 to confirmation, getting Mr. Seider and his group what they

1 need to challenge confirmation, and getting on with it,
2 because this company needs to get out of bankruptcy.

3 THE COURT: Well, I guess also if in the course of
4 preparing for confirmation -- if mediation is not conducted
5 and you're preparing for confirmation and something is
6 revealed to you or pointed out to you as something that
7 ought to give you pause or rethink or have the debtor as
8 fiduciary or Mr. Eckstein as fiduciary, turn to the plan
9 support parties and say --

10 MR. GREENBERG: We have a problem.

11 THE COURT: -- we have a problem.

12 MR. GREENBERG: That's right.

13 THE COURT: You're going to do that.

14 MR. GREENBERG: That's right. It's in our best
15 interest, we're not looking to put something in front of
16 Your Honor to have to take a second shot at it. Right.

17 Your Honor, just to -- and I don't mean to over
18 pound it, but not to belabor the point, just one last point,
19 which is this whole idea that the 21s weren't adequately
20 represented and there was a bunch of letter writing
21 campaigns that were going on, and as I'm sure you saw in the
22 papers there was a request to --

23 THE COURT: Right.

24 MR. GREENBERG: -- Ms. Golden to appoint a 21
25 committee, and there's some back and forth where she asks

1 both me and Mr. Eckstein to submit papers, and I'm sure you
2 saw, because we attached it to our pleadings, which is at
3 least the U.S. Trustee came out the same place we did on
4 this issue, which is that their position was that the 21s
5 were adequately represented on the committee as it stands.
6 So again, I don't think, you know, we have a problem with
7 lack of representation.

8 And, Your Honor, unless -- I mean there are bunch
9 of other issues, the transfer guarantor issue that they've
10 raised, this best interest test issue that they've raised
11 that I'd love to get into but I'm not going to get into
12 because they're confirmation issues.

13 THE COURT: Right. Okay.

14 MR. GREENBERG: So that's all I have unless you
15 have other questions.

16 THE COURT: All right. So who else should I hear
17 from?

18 MR. GREENBERG: Well up to you in terms of how
19 best you want to do this. Is it better to hear from the
20 rest of the parties and then put Mr. Parkhill up, or would
21 you --

22 THE COURT: Well, I don't know that I want to hear
23 from everybody saying --

24 MR. GREENBERG: The same thing.

25 THE COURT: -- me too. I would like to hear if

1 the committee.

2 MR. GREENBERG: Okay.

3 THE COURT: And then maybe we can go to
4 Mr. Parkhill.

5 MR. GREENBERG: Sounds great. Thank you, Your
6 Honor.

7 THE COURT: All right. Thank you.

8 MR. ECKSTEIN: Your Honor, good to see you.

9 THE COURT: Good afternoon. Good to see you.

10 MR. ECKSTEIN: Kenneth Eckstein of Kramer Levin on
11 behalf of the official creditors' committee.

12 Your Honor, I will try not to repeat the
13 comprehensive presentation that Mr. Greenberg just
14 completed. I think as Your Honor knows from reading the
15 pleadings the committee joins with the debtor in opposing
16 the request to compel the debtor and all the other parties
17 supporting the plan to enter into a mediation at this late
18 stage of the case.

19 THE COURT: Let me ask you, I didn't ask
20 Mr. Greenberg, I mean you could put the question as, you
21 know, how could it hurt?

22 MR. ECKSTEIN: How could it hurt, right, it's like
23 chicken soup.

24 THE COURT: Chicken soup, right?

25 MR. ECKSTEIN: Your Honor, I can address that

1 point. I mean let me make three basic points --

2 THE COURT: Okay.

3 MR. ECKSTEIN: -- and the third point is how can
4 it hurt, because I think in this case it could in fact hurt.

5 Number one, we all know mediation in some cases is
6 invaluable, and I've been involved in many cases where
7 mediation has frankly created consensus out of chaos.

8 THE COURT: Residential Capital.

9 MR. ECKSTEIN: Residential Capital, just can't
10 seem to leave my mind.

11 The fact is, and as Your Honor knows, this is
12 simply not that case. This is a case where there in fact is
13 very substantial consensus around a plan that has support
14 throughout the capital structure both at Luxco and at Capco,
15 has frankly overwhelming support for a plan from a voting
16 standpoint, and while I recognize that Your Honor is going
17 to have to decide whether the plan satisfies all the
18 provisions of a Chapter 11 or 1129, the fact of the matter
19 is this is a case which frankly is poised to go to
20 confirmation.

21 It is true, this case, the plan will be premised
22 upon a compromise and settlement of the various litigation
23 issues, one of which is the transfer guarantee issue, there
24 are fraudulent conveyance allegations, there are
25 intercompany claim disputes, there are valuation issues, all

1 of which are subsumed into a plan and all of which were
2 delicately settled.

3 The alternative in this case was always
4 litigation, and if the plan fails, unless the parties can
5 find some other solution, the various issues will be
6 presented to the Court for adjudication.

7 The parties decided early on before the first
8 settlement was reached that it made sense to enter into a
9 settlement, and this plan will present to the Court the
10 basis for the settlement in great detail, and Your Honor at
11 confirmation, not today, will have the opportunity to assess
12 whether or not the plan is reasonable.

13 Your Honor, we believe that the Court will confirm
14 that plan and will find this plan amply satisfies the
15 requirements for 1129.

16 That said, we don't believe that at this point in
17 time this case is in a position where mediation is warranted
18 or necessary. There is no stalemate and we have one
19 relatively small group, they're not unimportant, but are a
20 relatively small group that believes it should get more as
21 compared to other constituencies, and is going to object at
22 confirmation, and frankly that's what the process calls for
23 right now. It's a pretty discreet objection, it'll be
24 presented, and as Mr. Greenberg said, we have a schedule and
25 we can get there.

1 Number two, the Capco 21s in fact were very, very
2 carefully focused on and represented throughout the
3 negotiation process. The indenture trustee is on the
4 creditors' committee, more than 50 percent of the 21s are on
5 the creditors' committee, and more than 60 percent of the
6 Capco notes are -- of the 21s are supporting the PSA. And
7 as Mr. Greenberg indicated, the single largest beneficiary
8 of the amended PSA were the 21s.

9 So in fact what they really want to accomplish
10 through mediation was accomplished through the amended PSA.

11 We were fortunate to have the sale of Mexico,
12 which essentially sort of altered the fundamental premises
13 for the original PSA, and it allowed the parties to
14 restructure the PSA and ultimately garner the support of the
15 Luxco group.

16 But in addition to garnering the support of the
17 Luxco group all the parties to the case, recognizing that
18 the 21s were an important constituency, made sure that
19 substantial value over and above what was available through
20 the increased value from the sale of Mexico was essentially
21 shifted over to the 21s, and effectively the amended PSA
22 reflects a very substantial transfer of value from the Capco
23 16s and 19s to the Capco 21s, and frankly reduced the amount
24 of value that was being ascribed originally to the transfer
25 guarantee.

1 THE COURT: So the negotiating party that helped
2 accomplish that was yourself? Was --

3 MR. ECKSTEIN: Your Honor, I think the debtor and
4 the committee, but they were also actual holders of Capco
5 21s that were in the negotiations that fought vigorously to
6 make sure that additional value was transferred to the Capco
7 21s, and that is obvious from the change from November to
8 February in the amount of dollars that moved from
9 essentially the 16s and 19s to the 21s, recognizing exactly
10 the issues that are being complained about.

11 Now of course in every case I wish it was even
12 more value they say, but that's -- in some respects that's
13 what is the outcome of a settlement, which is never --
14 nobody gets everything they want, but they get a resolution.

15 This case was difficult, we were very fortunate to
16 have the Mexican sale, we're fortunate right now to have
17 more value going to everybody than people originally
18 expected. But the fact of the matter is we now have an
19 excellent plan which has tremendous support.

20 And Your Honor, I am on behalf of the committee
21 we're going to lay out at confirmation why we believe this
22 plan is reasonable and satisfies 1129 and 9019.

23 And you're right, if the plan doesn't satisfy
24 confirmation the parties with have to go back to the drawing
25 board and we'll have to litigate or do it again. But the

1 fact of the matter is, the fact that one party is objecting
2 is not grounds for mediation.

3 Which then gets to so what's the harm? The fact
4 of the matter is -- and I've been through mediation -- the
5 fact of the matter is mediation is not simple and we have a
6 schedule for confirmation and the confirmation schedule is
7 important -- and by the way it's still important that this
8 company emerge from Chapter 11, because we still have a very
9 substantial operating business in Brazil, we have non-debtor
10 entities with financings that have to be rolled over, and
11 people are counting on this company emerging from Chapter 11
12 within a timetable.

13 And so the fact of the matter is you have seven
14 parties involved in this case. You have the debtor, you
15 have the committee, you have the Luxco bonds, you have the
16 independent manager, you have Capree, you have Aurelius, and
17 you now have the Latham ad hoc group. And all of these
18 parties are going to have to agree on a mediator, are going
19 to have to submit mediation statements. These mediation
20 statements are not going to be simple, they're going to be
21 all the work that was done on all the different disputes --

22 THE COURT: No, there's another model, I mean the
23 other model of mediation and the assumption frankly that
24 somebody is available and has time is a big assumption, but
25 putting that to one side, there is the mediation model of

1 everybody, you know, getting in a group of rooms and not the
2 more traditional mediation statements, et cetera. So --

3 MR. ECKSTEIN: Your Honor, based on my observation
4 firsthand I don't believe that that would be a useful use of
5 anybody's time in this case. And the fact of the matter is,
6 the parties do have the ability to sit down and meet.
7 Mr. Greenberg and I and the financial advisors met with
8 Mr. Seider not that long ago, and without getting into
9 details suggestions were made both ways. It was not just
10 that Mr. Seider has made a proposal that was accepted. The
11 fact of the matter is a suggestion was made to Mr. Seider
12 that wasn't acceptable to him. That's okay. But the fact
13 of the matter is these parties don't need a third party to
14 get them to the table. If people want to talk there is the
15 ability to talk.

16 But realistically I've observed the parties in
17 this case firsthand and I took Mr. Seider's proposal, I
18 distributed it to the committee, we discussed it with the
19 committee, and the fact of the matter is, Your Honor, while
20 I don't want to say the parties refused to talk, I think
21 it's fair to represent to the Court that court ordered
22 mediation will not give rise to a change in parties' views,
23 which is that they have compromised in a manner necessary to
24 get the plan to confirmation. And I believe that's where
25 all the parties are right now, and I believe if you asked

1 the parties to the PSA to speak that's what they would all
2 say, is that we gave as much as we felt we could and as much
3 as we felt was required to get to a place where the plan was
4 agreed upon for confirmation.

5 THE COURT: Okay.

6 MR. ECKSTEIN: So --

7 THE COURT: All right.

8 MR. ECKSTEIN: -- we think that mediation would
9 not be useful in this case and we would request that the
10 motion be denied.

11 THE COURT: Okay. Thank you.

12 All right, shall we hear from Mr. Parkhill?

13 MR. GREENBERG: My colleague, Mr. Hamilton, is
14 going to handle that.

15 THE COURT: Okay.

16 MR. HAMILTON: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. HAMILTON: Robert Hamilton of Jones Day on
19 behalf of the debtors.

20 THE COURT: Okay. Mr. Parkhill, would you stand
21 up, please. Would you raise your right hand.

22 HOMER DAVID PARKHILL, WITNESS SWORN

23 THE COURT: All right, please have a seat. Okay.

24 MR. HAMILTON: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. HAMILTON:

2 Q Mr. Parkhill, can you tell the Court your full name?

3 A I'm sorry, what?

4 Q Tell the Court your full name.

5 A Homer David Parkhill.

6 Q Where do you work Mr. Parkhill?

7 A I work at Rothschild.

8 Q What is Rothschild?

9 A Rothschild is an international financial advisor that
10 focuses on providing advice and merger and acquisitions,
11 restructuring, and debt advisory.

12 Q And what do you do at Rothschild and how long have you
13 done it?

14 A Well, I'm to managing director in the restructuring
15 practice. I've been with Rothschild since 2001.

16 MR. HAMILTON: Your Honor, may I approach?

17 THE COURT: Yes. Thank you.

18 THE WITNESS: Thank you.

19 BY MR. HAMILTON:

20 Q Mr. Parkhill, I've handed you a copy of a document
21 that's titled declaration of Homer Parkhill. Do you
22 recognize this document?

23 A I do.

24 Q Did you sign this document?

25 A I did.

1 Q All right. And at the time when you signed it are the
2 statements in here that are attributed to you true and
3 accurate to -- did you believe they were true and accurate
4 at the time?

5 A They are.

6 Q All right.

7 MR. HAMILTON: Your Honor, I would proffer the
8 declaration of Homer Parkhill into evidence as his direct
9 testimony here.

10 THE COURT: All right. Any objections?

11 MR. SEIDER: No objection, Your Honor.

12 THE COURT: Okay, it's in.

13 (Debtors' Exhibit No. 1 was admitted)

14 BY MR. HAMILTON:

15 Q How did you first get involved in NII's restructuring,
16 Mr. Parkhill?

17 A In November of 2013 we started working with the company
18 in an exercise evaluating strategic alternatives, which
19 covered the landscape of possible options from M&A
20 alternatives to exchange offers and the like.

21 Q And then what happened next?

22 A Given the company's financial position that quickly
23 migrated into more of a comprehensive restructuring
24 discussion to deal with the -- really the liquidity
25 challenges and the balance sheet challenges that were --

1 that the company was facing.

2 Q And did those discussions start to involve
3 constituencies of creditors of the debtors?

4 A Yes. Very early on we organized and encouraged the
5 organization of the bondholders to interface with -- to
6 start negotiations around potential plans to deal with our
7 challenges.

8 Q And can you tell the Court what was your specific role
9 in those negotiations?

10 A I led the team at Rothschild in interfacing with the
11 principals and the professionals for the ad hoc bondholder
12 groups that were formed.

13 Q All right. And were you able to negotiate a deal in
14 the summer -- last summer?

15 A Despite, you know, exhaustive efforts and countless
16 hours of engagement and kind of a full open kimono approach
17 with the constituents involving, you know, loads of data and
18 information exchanges, we were not able to reach a -- you
19 know, a prearranged resolution.

20 Q What was the principal issue that prevented you from
21 brokering an out-of-court deal?

22 A The principal issues resolved around the allegations,
23 the transfer guarantee, the settlement -- or the issues of
24 the transfer guarantors, the intercompany allegations and
25 issues and the issues relating to fraudulent conveyance

1 claims. They were really embodied in the letter that
2 Aurelius submitted in February of 2014.

3 Q Okay. Can you just generally describe the positions
4 that the different constituencies took during those
5 negotiations and your understanding of why it mattered to
6 them?

7 A Well the largest issue was the transfer guarantor
8 issue. That issue had the effect, to the extent that those
9 guarantees weren't properly released, really shifting value
10 from the constituents in the capital structure, primarily
11 shifting value away from the Luxco creditors and to the 16
12 and 19s who are the parties that have that claim. That
13 issue and the issue of valuation, because as value moves the
14 waterfall recoveries for the constituents moves, but those
15 two primary issues were the issues that were the most
16 difficult.

17 Q Did the negotiations continue after the debtors'
18 Chapter 11 cases were filed?

19 A They did. Just prior to filing the groups actually
20 split once again in terms of -- we had a crossover group
21 that we were primarily engaged with, as well as with the
22 group of 16s and 19s, the Aurelius group, prior to the
23 filing. Right before filing the crossover group splinters
24 into two groups, Luxco group and a -- really a Luxco group
25 that represented just the Luxco interests. And so post

1 filing we were engaged really with the Luxco group and then
2 the we'll call the Capco group around potential plans of
3 reorganization.

4 Q What was your involvement in the negotiations that led
5 to the initial settlement and initial plan support
6 agreement?

7 A The November settlement?

8 Q Yes.

9 A So, I led the team again in interfacing with the
10 principals and the professionals for those groups, including
11 the committee at that time who was formed and obviously
12 became very active in trying to broker a resolution of the
13 estates' issues and the settlement issues.

14 Q Have you ever used the phrase dual track negotiations
15 that describe that time period?

16 A Yes, we did, and we have, because in reality what was
17 going on was the Luxco group and the 16 and 19 group led by
18 Aurelius were in a dueling term sheets situation where we
19 were being -- negotiating simultaneously with each group the
20 terms of a potential plan of arrangement trying to move
21 really both groups to one proposal to try to unify both
22 sides, which we were unsuccessful in doing, but along the
23 way trying to find a plan that had a settlement of the
24 issues and that we could actually get confirmed.

25 Q All right. Can you describe for the Court what were

1 the three key parameters that governed those negotiations?

2 A Sure. So --

3 THE COURT: I'm just going to say that I would
4 like this to stay at 30,000 feet, because I don't want
5 anyone after the fact to say that something that was put on
6 the record was part of settlement negotiations.

7 So, Mr. Seider, I know that you know how to object
8 if there's something objectionable, but I'm just beginning
9 to feel like I'm getting close to that point.

10 MR. HAMILTON: Thank you, Your Honor.

11 THE WITNESS: I'll try to stay to highlights, Your
12 Honor.

13 THE COURT: Okay.

14 THE WITNESS: So the three issues, really I
15 mentioned one, it's the settlement of the three issues, the
16 transfer guarantor, the intercompany claims, and the
17 fraudulent conveyance issues.

18 So getting to a settlement of those issues, making
19 sure that that settlement could fit within the kind of
20 framework of reasonableness for the debtors and for the
21 other constituents, and making sure that that settlement
22 could actually have enough votes to carry a plan and
23 actually be confirmed and have an emergence.

24 BY MR. HAMILTON:

25 Q So you needed to settle; is that right?

1 A Settle, yes.

2 Q Why did you need to settle the disputed claims?

3 A So there was a lot of discussion around the possibility
4 of litigating these claims in the bankruptcy cases to some
5 final result. There was real concern that the debtors had
6 that one, that litigation process would be very lengthy,
7 time consuming, and disruptive to the overall business. We
8 have local debt of about a billion six of local debt in our
9 markets that also was experiencing defaults and we were
10 having negotiations simultaneously with them around a time
11 frame to get the cases resolved. And it was clear to us
12 that an exhaustive, you know, litigation of these issues was
13 going to kind of push us well past the time frame that our
14 local creditors were going to be comfortable with.

15 So pretty quickly I think people were focused on
16 trying to get a resolution that would allow these issues to
17 be settled and protect the value of the business.

18 Q All right. And I think the second thing you said was
19 that the settlement had to be reasonable; is that right?
20 What do you mean by that?

21 A Sure. Well, I mean that the issues of the settlement
22 had to kind of fit within the framework of reasonableness
23 from the standard of, you know, if the issue -- we couldn't
24 settle the issues at a hundred percent probability one way
25 or the other, maybe it'd be the balance based on the facts

1 and circumstances that existed around each of those issues.

2 Q And then the last parameter I think you mentioned was
3 acceptance by the creditors?

4 A We were very focused on organizing and negotiating with
5 the requisite body of creditors that could actually carry a
6 class of votes so we could actually deliver the settlement
7 through the bankruptcy process. So that was very much a
8 focus.

9 Q How did the initial settlement and initial PSA fit
10 within these parameters?

11 A It fit within those parameters, you know, very well.
12 We had a settlement of the transfer guarantor percentage at
13 27 and a half percent, the intercompany claims were settled
14 at 25 percent, and the fraudulent conveyance claims were
15 settled at 25 percent.

16 Q Did the debtors make a business judgment as to whether
17 those percentage recoveries on those disputed claims was in
18 the range of reasonableness?

19 A We did, and we also went a step further and set up a
20 process where whereby we had Scott Win, the independent
21 manager, appointed for the purposes of evaluating that
22 settlement and opining on that settlement on behalf of the
23 Luxco estate. So that was another added reason why we were
24 comfortable with the process and the PSA that we signed was
25 one that we would be comfortable with.

1 Q What happened next?

2 A Well fortunately for all of us in the room the sale
3 discussions which we were leading as well culminated in the
4 bit from AT&T for Mexico, and in that event and the
5 implications of that event, which is raising the value of
6 the overall estates, you know, certainly shifted the
7 landscape in terms of the dialogue around how much value
8 there was to go around, and you know, the need to kind of go
9 back and look at the settlement and the overall plan in the
10 context of that event.

11 Q How did the added value from the proposed Mexico sale
12 affect the anticipated recovery of the Luxco bondholders?

13 A To the extent that the existing settlements were held
14 it would have a full recovery to the Luxco creditors. And
15 so they went from recovering based on the plan settlement
16 value I think it was 96 percent to recovering, you know, par
17 plus accrued -- of par plus prepetition interest.

18 Q So if as a result of the proposed Mexico sale the Luxco
19 bondholders are getting 100 percent was there anything left
20 to negotiate in terms of the settlement of the disputed
21 claims?

22 A Sure there was.

23 Q Why?

24 A There was, you know, certainly a recognition that the
25 kind of efforts of the independent manager, Scott Win, and

1 kind of his perspective had to be taken into account.

2 The 21s that were represented in the group that we
3 were negotiating with, you know, had a view on, you know,
4 what they would -- you know, their perspective on the
5 feedback they were getting.

6 And so in the context of that feedback and in the
7 context of, you know, the added value, really we had to kind
8 of go back to the drawing board and really start to
9 negotiate plan value and primarily transfer guarantor,
10 that's the only percentage that moved.

11 Q All right. And who were the different constituencies
12 that were involved after the amounts were in the Mexico sale
13 in renegotiating the transfer guarantor claims that you just
14 referred to?

15 A So the different -- we had the Luxco group, we had the
16 16 and 19 group that we call the Aurelius group, the Capco
17 group, there was the committee, and then the individual
18 creditors that sat on the committee which had, you know,
19 sizable positions.

20 Q And how did it get resolved?

21 A It got resolved by the PSA and the plan that's in front
22 of the Court, the transfer guarantor percentage was shifted
23 downward by -- from 27 and a half percent to 21 percent,
24 which you know, materially shifted value from the 16 and 19
25 group to the 21 group for --

1 Q How much value?

2 A Well there was approximately 50 million of value based
3 on that discreet move that were shifted from the 21s -- to
4 the 21s from the 16 and 19s.

5 Q What was the net result of shifting this value to the
6 21s from the 16 and 19s, what did it enable you to get?

7 A The consensus of the parties that are in the room and
8 the votes that we have, you know, supporting this plan or
9 that we anticipate having supporting this plan that are
10 backing the PSA.

11 Q Can you describe for the Court how difficult and
12 intense these negotiations were in the February and early
13 March time period?

14 A Sure. Post the sale order, you know, despite there
15 being a lot of value to go around, these negotiations around
16 the percentages were extremely difficult. I think as
17 Mr. Greenberg has said involved countless hours of
18 negotiations back and forth around the percentage moves and
19 the relative impacts -- financial impacts of those moves.

20 And ultimately we reached an agreement on the
21 basic framework in mid February, but we had a host of other
22 issues, which I would call smaller economic issues primarily
23 around professional fees that at various points in time from
24 February to the March 5th signing of the PSA threatened to
25 up end the deal, and there were many evenings where, you

1 know, we thought, you know, we were going the litigation
2 route despite our, you know, best efforts.

3 So it was a very tenuous period and it was one
4 that was very difficult to reach, but one that we obviously
5 reached.

6 Q Mr. Parkhill, do you have any reason to believe that
7 court ordered mediation with the 2021 ad hoc group at this
8 point would result in any changes to the current settlement
9 or PSA?

10 A I don't.

11 Q Why not?

12 A As has been said in the court I think the parties that
13 have signed up for this agreement made these moves in
14 contemplation of these moves being what would be required to
15 get to consensus, and getting to consensus means having the
16 requisite votes to confirm the plan. And I think they're
17 comfortable with the moves that they've made, I can say, you
18 know, maybe comfortable is too storage of a term, I think
19 they're begrudgingly comfortable with the moves that they've
20 made, and I really don't see economically, you know, the
21 leverage of making a move or the positions that each of
22 these parties have. They expect that this plan is going to
23 be presented and they have the votes and there's no reason
24 for them to give anymore economically.

25 MR. HAMILTON: Thank you, Your Honor. I have no

1 further questions.

2 THE COURT: Okay. Mr. Seider?

3 MR. SEIDER: Your Honor, may I just ask a couple
4 questions for Mr. Parkhill?

5 THE COURT: Sure.

6 MR. SEIDER: Thank you.

7 THE COURT: Absolutely.

8 MR. SEIDER: For the record Mitchell Seider,
9 Latham & Watkins.

10 Your Honor, if you'll allow I have just a couple
11 of questions for Mr. Parkhill and then maybe I could have a
12 moment to respond to just a few of the comments --

13 THE COURT: Yes.

14 MR. SEIDER: -- Mr. Eckstein and Mr. Greenberg
15 made.

16 THE COURT: That would be fine.

17 MR. SEIDER: Thank you very much.

18 CROSS-EXAMINATION

19 BY MR. SEIDER:

20 Q Good afternoon, Mr. Parkhill.

21 A Very well, Mr. --

22 Q How are you today?

23 A I'm well.

24 Q Good. Good.

25 Mr. Parkhill, on direct I think it was your

1 testimony that your goal in negotiating a potential
2 settlement was to achieve acceptance by creditors and be
3 able to carry a class of votes. Is that a fair summary?

4 A Not just a class, but to be able to present a plan that
5 had a reasonable chance of being confirmed.

6 Q Thank you.

7 I gathered from your testimony that you've become
8 intimately familiar with the parties with whom you've been
9 negotiating towards the current PSA?

10 A Yes.

11 Q Okay. Mr. Parkhill, do you know among the signatories
12 to the current PSA what percentage of the Capco 21 notes
13 those signators hold?

14 A I believe 60 percent, approximately.

15 Q Less than two-thirds?

16 A Sixty percent is less than two-thirds.

17 Q All right. Thank you.

18 MR. SEIDER: I have no more questions for
19 Mr. Parkhill.

20 THE COURT: Okay. Mr. Parkhill, you can step
21 down.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you.

24 All right. So you wanted to respond a bit to the
25 arguments.

1 MR. SEIDER: Yes, Your Honor. And thank you.

2 THE COURT: Let me start out -- I'm sorry, did you
3 want to say something else?

4 MR. HAMILTON: Your Honor, we have -- there are
5 others that wanted to speak in support of our objection to
6 mediation. It might be better to hear from them before --
7 so we don't have to have multiple rebuttals.

8 THE COURT: Okay. Let me ask Mr. Seider a
9 question, okay? So sometimes mediation works, but sometimes
10 parties become very inspired by the looming deadline of a
11 confirmation hearing.

12 MR. SEIDER: Yes.

13 THE COURT: Don't you think that this might be one
14 of those cases where parties could be equally inspired by
15 the looming confirmation hearing -- which by the way,
16 looking at my calendar I seem to only have penciled you in
17 for one day, so we're going to have to talk about that,
18 because if there's not consensus by then one day sounds
19 woefully inadequate, to use the phrase that you guys like to
20 use all the time, so we're going to have to talk about that.

21 But it seems to me that sometimes even when
22 parties have engaged, for example, in months of mediation,
23 for example, in LightSquared, once you begin to face the
24 reality of a confirmation hearing people become more
25 motivated to have discussions and resolve open issues. So

1 might that not work as well here as mediation?

2 MR. SEIDER: Your Honor, sometimes that does
3 happen, and Your Honor, sometimes it doesn't, and our read
4 of the environment in this case is that it's not going
5 happen unless an outside party, Your Honor, forces it to
6 happen.

7 I heard Mr. Greenberg and I heard Mr. Eckstein
8 respond today at the podium to the proposal that we had made
9 to them on March the 22nd. It's nine days ago.

10 Now, Your Honor, I am not casting aspersions on
11 what their response is or how their clients reacted to it,
12 I'm sure that they've reported honestly how their clients
13 felt about it. I will note though that if they were truly
14 serious about having negotiations with us I would have heard
15 from them before today, and it might have been as simple as
16 a phone call --

17 THE COURT: But don't you think -- I mean there's
18 kind of a -- that's a little counterintuitive, because by
19 not responding to you before today it enabled you to stand
20 up and say we didn't hear from them. So that's --

21 MR. SEIDER: Your Honor --

22 THE COURT: -- a negative --

23 MR. SEIDER: Sorry.

24 THE COURT: I'm sorry -- that's -- makes them look
25 bad, if you will.

1 MR. SEIDER: Your Honor, I would have liked
2 nothing better than to walk in here today and say, Your
3 Honor, I think the motion may have had a salutary effect,
4 because we're engaged in discussions with the debtors and
5 the committee right now, there's no need to have this
6 hearing. But that's not what happened.

7 THE COURT: Okay.

8 MR. SEIDER: All right.

9 THE COURT: All right. Go ahead.

10 MR. SEIDER: And thank you. And again, I
11 appreciate your patience --

12 THE COURT: Sure.

13 MR. SEIDER: -- I certainly understand.

14 I want to make one -- well two points really about
15 what Mr. Eckstein had to say. Your Honor, yes, it's true
16 that the sale of the Mexico business was a success and that
17 put more value into the estate, but what our clients are
18 interested in is not more value. What they're interested in
19 is receiving a quality of distribution on instruments that
20 are of equal dignity.

21 THE COURT: But what about the issue that's been
22 identified, and this is not a observation that's intended to
23 be a negative observation, about parties being hedged, okay?

24 MR. SEIDER: Yes.

25 THE COURT: This happens all the time, people have

1 holdings in different parts of the capital structure, people
2 enter the capital structure at different points of time --

3 MR. SEIDER: Yes.

4 THE COURT: -- and their basis varies.

5 But so here you have a situation though because of
6 the highly hedged nature of the majority of your
7 constituency they're going to be taking money out of each
8 other's pockets, and it's --

9 MR. SEIDER: No.

10 THE COURT: -- an extremely delicate and highly
11 complex process, right?

12 MR. SEIDER: It is, and I really have two things
13 to say, Your Honor.

14 First, Your Honor is actually --

15 THE COURT: There's nothing -- I mean to be clear,
16 because I don't want to be quoted out of context.

17 MR. SEIDER: No.

18 THE COURT: There's -- it's allowed, it's done,
19 claims trade, all good.

20 MR. SEIDER: Yes.

21 THE COURT: It's just it complicates a lot of
22 things, including negotiations such as the one you're saying
23 that we ought to have under the auspices of a mediator.

24 MR. SEIDER: Yes, and Your Honor, really two
25 things.

1 Your Honor has actually put her finger on the
2 point that I wanted to make with respect to what
3 Mr. Greenberg said as doing the math, and I'll get to that
4 in a moment.

5 The second point, Your Honor, is the holders of
6 the Capco 21s who we represent who do have cross holdings
7 understand very well, better than I ever will and perhaps
8 better than Your Honor ever will, where their economic
9 interests lie in this particular capital structure, and if
10 their view was that what's been put on the table was
11 sufficient with respect to their rights under their
12 instruments we wouldn't be here.

13 THE COURT: But it's a closed system, right? So,
14 I mean if we could get more money from the outside that
15 would be one thing, but if it's just -- it's a closed
16 system. So if we give the 21s more then we have to take it
17 from someone at Luxco or the 16s or --

18 MR. SEIDER: We're not interested in interfering
19 in any way with the Luxco distribution. Our point is that
20 the 16s and the 19s are getting more. Not that we're
21 getting the same and we want more, we're getting less and we
22 want what they're getting to put it in its most simple
23 terms.

24 On the point that Your Honor made and that
25 Mr. Greenberg made about doing the math, which also I think

1 ties in to the point that he made about this being late
2 stage, and this really goes to explaining how we got to be
3 at this late stage with the agreement that we would like to
4 work our way into. Your Honor, if you look at the holdings
5 of the Aurelius group, the Capree group, and the Luxco group
6 -- and I'll explain that in a minute -- what you will see is
7 that this settlement that's baked into the current RSA is
8 really one that was achieved not at their expense
9 necessarily, but rather at the expense of the distributions
10 to creditors who were not in the room.

11 And I heard very well what Mr. Eckstein said about
12 the committees' participation, and I am sure that they
13 participated aggressively and fully. The members of the
14 committee do include Capree and Aurelius, and I'll explain
15 this in a moment, who hold 21 notes, and also does include
16 the indenture trustee for the 21 notes, who also happens to
17 be the trustee on the 19 notes as well.

18 So with what as background, Your Honor. Aurelius'
19 holdings in the Capco 21 notes are very small compared to
20 its holdings in the 16s and the 19s. Based on its last 2019
21 it holds about 11 percent of the 21s and it holds a combined
22 46 percent among the 16s and the 19s. Capree has very
23 extensive holdings across the structure, Your Honor. It
24 holds about 37 percent of the combined 16s and 19s, and
25 holds about 42 percent of the 21s. It also holds 36 percent

1 of the combined Luxco notes.

2 The transfer guarantor settlement that's baked
3 into the RSA costs Capree about \$7 million on its position
4 in the 21s, but it provides Capree with a path to recover
5 615 million on the 582 million face amount that it holds in
6 the combined Luxcos. So said another way, Your Honor, it's
7 a small price of admission to pay from its perspective for a
8 path to exit.

9 Now the Luxco group, Your Honor, has a great
10 incentive as well here, that group holds 4 percent of the
11 21s and less than a quarter percent of the combined 16s and
12 19s and approximately 35 percent of the combined Luxcos.
13 The cost to the Luxco group on its 21s from the settlement
14 is a mere \$6 million.

15 We were here last week on the DIP, I think the
16 fees flowing to the Luxco is from the DIP, it's about
17 \$6.24 million.

18 And so what this all goes to, Your Honor, is we're
19 not casting aspersions, they're voting with their wallets,
20 and that's fine, they should, but when you unpack this a
21 little bit, Your Honor, what you see is it's really from
22 their perspective more a matter of moving from the right
23 pocket to the left --

24 THE COURT: But you've -- but you're making my --
25 you're making the point that must be said in response to

1 you, which is they are voting with their wallets.

2 MR. SEIDER: Yes.

3 THE COURT: So, I can't order someone to vote
4 against their wallets.

5 MR. SEIDER: Correct.

6 THE COURT: And therefore that's why at
7 confirmation it doesn't depend on a, you know, demonstration
8 and we can fill in the complete picture of everything that
9 you've just said, who owns what, what it's getting for them,
10 we always -- you know, it's solving for simultaneous
11 equations. We can't really solve for the mystery variable,
12 which is the basis, so we don't know what that is, right?

13 So, I can't order someone to act not in their
14 economic interest, I can only reiterate --

15 MR. SEIDER: Yes.

16 THE COURT: -- come to confirmation, you have to
17 satisfy the standards for confirmation, and I will say --
18 try to say this in exactly the right way, it's not just a
19 9019 hearing, okay, dressed up in confirmation clothing, it
20 is going to have elements of both, but the 1129 standards
21 are still real standards and they are not made any lighter
22 or less burdensome by the fact that there's settlements that
23 are part of it.

24 So, I'm beginning to sound like I'm ruling,
25 because I am, and I appreciate your making the issues so

1 highly defined. I don't think this is a situation in which
2 ordering so many people to engage in a mediation that
3 they're not interested in is really the best way to go, and
4 I simply would not be comfortable with that.

5 I think that anecdotally I would tell you that
6 besides the cases that you all know about there are many,
7 many cases that you don't know about in which I encourage,
8 cajole, kind of order people for go into mediation. This is
9 not a case in which I feel that it's appropriate to do that.

10 That being said though, I am going to ask all the
11 professionals to continue to keep the lines of communication
12 open, fully consensual is better than highly contested
13 confirmation hearing. No confirmation hearing is without
14 risk. Let it not be just about professional fees. I assume
15 that it's not, but I'll say that out loud too. And to the
16 extent that you wish to reraise at confirmation as part of
17 good faith or anything else that you feel is appropriate,
18 the lack of negotiations by any or all the constituencies of
19 course I'll hear you. But I think the best thing for this
20 case is to keep marching towards confirmation.

21 And just to be hedged from my calendar
22 perspective, I think we should talk about additional dates.

23 So, I'm going to deny the motion for mediation for
24 the reasons that I've indicated, and I'm going to remain
25 optimistic that if there's any movement that can be had that

1 you will accomplish that.

2 MR. SEIDER: Okay.

3 THE COURT: All right?

4 MR. SEIDER: Your Honor, I certainly understand,
5 and on behalf of our clients I want to thank you for your
6 time --

7 THE COURT: Certainly.

8 MR. SEIDER: -- and consideration of this.

9 THE COURT: Okay.

10 MR. SEIDER: It's greatly appreciated.

11 THE COURT: All right.

12 MR. SEIDER: Thank you.

13 THE COURT: Let's look at the calendar though,
14 because that is causing me some concern. So you have the
15 3rd.

16 MR. GREENBERG: A Wednesday.

17 THE COURT: Right. And I can give you the morning
18 of the 4th, but not the afternoon. And I can give you
19 Monday the 8th.

20 MR. GREENBERG: I'm sure we won't need it, but
21 okay. That works.

22 THE COURT: Okay. I'll give you Monday the 8th
23 and then we will stop there.

24 But just for the stake of full disclosure, because
25 I know you have timing elements, the 9th I have a Lehman

1 day, the 10th through the 12th I have the circuit conference
2 so I won't be in town, and the week of the 16th there are a
3 couple of Lehman days as well. The week of the 22nd I am
4 out of town the entire week. So it's challenging after the
5 -- those dates that I've given you, just keep it in mind.

6 MR. GREENBERG: Okay.

7 THE COURT: All right? Will somebody send me an
8 order --

9 MR. GREENBERG: Absolutely.

10 THE COURT: -- with respect to today's motion?

11 Is there anything else that we need to take care
12 of today?

13 MR. SEIDMAN: Oh, yes, thank you. Your Honor, I
14 think there was one --

15 MR. GREENBERG: One open issue.

16 THE COURT: Okay.

17 MR. SEIDER: May I --

18 THE COURT: Sure.

19 MR. SEIDER: -- stay here?

20 THE COURT: Sure, you can stay there, that's fine.

21 MR. SEIDER: Thank you.

22 I think there was one point that one of my
23 partners has been handling with the Jones Day firm, it has
24 to do with when the debtors' confirmation brief is due, I
25 think, and please correct me if I'm wrong, the schedule they

1 provided would have that brief being filed two days before
2 the start of the confirmation hearing. We had asked that it
3 be provided earlier so we actually have a chance to read it
4 and respond to it.

5 THE COURT: Earlier would be better.

6 MR. GREENBERG: Which is fine. The retort that we
7 had to that, Your Honor, just to be clear, is that we ask
8 that they would correspondingly move back their objection so
9 the debtors aren't getting jammed in terms of preparing for
10 a contested confirmation hearing.

11 THE COURT: Okay.

12 MR. GREENBERG: And so --

13 THE COURT: So can everybody give a couple a days?
14 I mean we're pretty far out from those days.

15 MR. GREENBERG: Yeah, if we can -- you know, we
16 can move it back, I think the request from your litigation
17 partner was the Friday, but I would like to see the
18 objection deadline come in correspondingly so the debtors
19 have enough time to prepare.

20 THE COURT: So when are you proposing that the
21 debtors and the proponents brief in support would be? I
22 love little calendars, little confirmation calendars if you
23 want to prepare one.

24 MR. GREENBERG: So, Your Honor, this is --

25 THE COURT: When do you -- when would you propose

1 to give us the brief in support?

2 (Pause)

3 MR. GREENBERG: Just as long as we're not --

4 THE COURT: Okay. So --

5 MR. GREENBERG: -- compressing our own timeline.

6 THE COURT: -- when will you -- Mr. Greenberg,
7 when do you propose your papers come in?

8 MR. GREENBERG: Okay. So just to put it on the
9 record, the objection deadline as it stood now for
10 confirmation objections was the 20th, that would get pulled
11 to the 18th, which is a Monday of May.

12 THE COURT: Okay.

13 MR. GREENBERG: And the brief that would be filed
14 that would also address any objections would be on Friday,
15 May 29th.

16 THE COURT: Okay.

17 MR. GREENBERG: And then the hearing would start
18 the following Wednesday.

19 THE COURT: Okay. Another thing, maybe too much
20 information, but I have a daughter graduating from law
21 school the last week of May. I will not take your phone
22 calls.

23 MR. GREENBERG: Understood. Understood.

24 THE COURT: Okay?

25 MR. GREENBERG: Okay. Thank you, Your Honor.

1 MR. ECKSTEIN: First, congratulations.

2 THE COURT: Thank you.

3 MR. ECKSTEIN: You shouldn't take the phone call
4 at least then.

5 Just for clarity, I'm -- the committee is planning
6 on submitting papers in conjunction with when the debtors
7 submit --

8 THE COURT: Sure. Okay.

9 MR. ECKSTEIN: -- its papers, I just wanted to
10 make that clear.

11 THE COURT: All right. Okay. That schedule works
12 very well for us.

13 MR. GREENBERG: Okay.

14 THE COURT: Okay.

15 MR. GREENBERG: So, I think we have an agreed upon
16 schedule.

17 THE COURT: All right. Thank you all so much.

18 MR. GREENBERG: Thank you, Your Honor.

19 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

20 (Whereupon these proceedings were concluded at 3:22 PM)

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I N D E X

T E S T I M O N Y

DEBTORS'

WITNESS

EXAM BY

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MR. HAMILTON

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

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[& - adjudication]

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